

II. Remarks

Claims 1-22 remain pending in the present application. Further review and examination of this application in view of the following remarks is herein respectfully requested.

Allowable Subject Matter

The Applicant gratefully acknowledges indication, by the Examiner, of allowable subject matter in claims 1-12 and 18-22.

Rejection Under 35 U.S.C. §103

Claim 13 is rejected under 35 U.S.C. §103 as being unpatentable over United States Patent No. 2,949,946 issued to Johnson (Johnson). The Examiner indicates that applicant's prior arguments with respect to the patentability of claim 13 "are not commensurate in scope with the claimed subject matter." Applicant agrees with the Examiner that the terms "upwardly" and "downwardly" are relative terms and can be read in any matter so long as it is consistent with their definitions. Applicant further agrees with the Examiner that "[t]he inclined surface of Johnson inclines upwardly from the bottom of the bit," HOWEVER claim 13 requires the inclined surface to face laterally and upwardly. The Examiner appears to be ignoring the words "to face" in the claim limitation. The surface of Johnson is not inclined to face laterally and upwardly – it faces laterally and downwardly.


Claim 13 affirmatively recites "an upper end including a cutting surface." While the term "upper end" by itself might be arbitrarily chosen, the inclusion of "a cutting surface" points to a particular end of the cutting bit being claimed. The phrase "to face laterally and upwardly" has a defined frame of reference. The

oblique surface in question must face toward the upper end that is previously recited in the claim. While applicant believes that the existing language of claim 13 defines a structure that is completely opposite to that disclosed or suggested by Johnson, the applicant would welcome any suggestion from the Examiner of language that would more clearly define that difference.

Applicant asserts that pending Claims 1-22 are patentable. Applicant respectfully requests the Examiner grant allowance of these claims. The Examiner is invited to contact the undersigned attorneys for Applicant via telephone if such communication would expedite this application.

Respectfully submitted,

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